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L85-1308a

OGC Has Reviewed

18 August 1955

MEMORANDUM FOR: Director of Communications

SUBJECT : Personal Liability of Agency Employees
Operating Government-owned Vehicles

REFERENCE : Memorandum from Director of Communications
to OGC, Dated 9 June 1955, Same Subject

1. Your memorandum requests the advice of this Office on the following questions, with particular reference to the situation in the District of Columbia, Maryland, Virginia, West Virginia and Pennsylvania.

a. What personal liability does an Agency employee assume where, operating a Government-owned vehicle in the line of duty, he is involved in an accident resulting in personal and/or property damage?

b. To what extent is an Agency employee required to post a bond, and/or other proof of financial responsibility in the event that such an employee is involved in an accident resulting in personal or property damage?

c. Where Agency employees are responsible for the operation of Government-owned vehicles in the performance of their duty, are such employees required, or should they be advised, to procure personal insurance to cover any liabilities they may incur as a result of accidents?

d. In these cases where Agency employees are required, or advised, to post personal bonds, or acquire personal liability insurance, to what extent does the Agency bear the costs of such bonds or insurance?

2. Questions a and c: The general rule is that any person is liable for his negligent or wrongful acts or omissions, including those committed in the course of his employment. If the employer is a private person, he is also liable. Although as a general rule, the United States, being sovereign, cannot be sued without its consent, the Federal Tort Claims Act of 1946 has created an exception to the rule by providing for the adjudication and settlement of claims "caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, as a private person, would be liable to the claimant" (60 Stat. 842, (1946) § 403, 410). The Act further provides that settlement of any claim under the Act shall bar claims or actions against the employee

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by reason of the same subject matter. However, there is no requirement that the claimant move against the United States, rather than the employee, although in most cases he certainly would do so (General Services Administration advises of several recent cases involving GSA personnel where the plaintiff elected to sue the employee, rather than the Government). Accordingly, it is believed the employee would be well advised to procure personal liability insurance.

Question b:

(1) District of Columbia. The recently enacted Motor Safety Responsibility Act of the District of Columbia (P.L. 365, 83rd Cong.) requires security in the event of certain accidents but exempts vehicles owned by the United States and "the driver of such vehicle if operating such vehicle with permission".

(2) Maryland and Virginia. Both states require, in the event of certain accidents, proof of financial responsibility in the form of an insurance policy, a bond or a deposit (Virginia, however, authorizes the Commissioner of the Division of Motor Vehicles to dispense with these "requirements on the part of any operator or chauffeur whom he finds to be free from any blame for such accident"). However, the General Services Administration, with whom we have conferred on this problem advises that their experience, and that of the Post Office Department, is that in practice these two states do not require proof from the owner or operator of a vehicle owned by the United States. This practice could indicate an attitude on the part of those states that the application of this requirement to the federal Government would be an unconstitutional attempt to interfere with the federal Government. Or the states may overlook the requirement simply because to do otherwise would be impractical. In any event, this Agency and its drivers need not concern themselves with the requirements of these states concerning security.

(3) West Virginia and Pennsylvania. West Virginia and Pennsylvania exempt motor vehicles owned by the United States from the requirements concerning proof of financial responsibilities. The drivers of such vehicles would also be exempt.

Question d: We are not aware of any existing authority which would permit this Agency to bear the cost of bonds or insurance for its drivers, in the absence of security or operational consideration.

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[Redacted]
Assistant General Counsel

OGC:REH:ss

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